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COVER NOTE

From:	General Secretariat
To:	Delegations
Subject:	Conclusions of the 13th Annual Meeting of National Experts on Joint Investigation Teams (JITs)

Delegations will find in the Annex the conclusions from the 13th Annual meeting of the National Experts on Joint Investigation Teams (JITs), which was held on 17 and 18 May 2017 at the premises of Eurojust in The Hague.

Conclusions
of the
Thirteenth Annual Meeting of National Experts
on
Joint Investigation Teams (JITs)
(17 and 18 May 2017, Eurojust, The Hague)

The 13th annual meeting of the National Experts on Joint Investigation Teams (JITs) - organised by the JITs Network Secretariat in close cooperation with Eurojust and Europol - took place at Eurojust in The Hague on 17-18 May 2017. The meeting brought together experts from Member States, representatives of EU institutions and agencies, as well as international bodies involved in this area.

In recent years, the JITs Network has developed and consolidated its role as an important platform of expertise in the field of JITs, both inside and outside European Union, as particularly evidenced by the publication of the revised JIT model agreement - endorsed in 2016 in a Council Resolution - and practical guide. In line with this evolution, the role of JITs experts has developed at national level and the JITs Network has increased its visibility vis-à-vis EU and international agencies and bodies, as well as third States.

Despite the broadening of their role, JITs experts do not always seem to be easily identified at national level. In addition, whereas other networks of practitioners have been established on the basis of legislative acts¹, the JITs Network still operates on the basis of a Council document of 2005, which has not been updated since then.

¹ Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network (OJ L 348, 24.12.2008, p. 130); Council Decision 2002/494/JHA of 13 June 2002 setting up a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes (OJ L 138, 04.06.2009, p. 14).

With the adoption of the revised Eurojust Decision², the JITS Network gained indirect legal recognition through:

- the explicit reference to JITs experts in the composition of the Eurojust National Coordination System (ENCS – Article 12); and
- the setting up within Eurojust of a dedicated Secretariat (Article 25a).

Against this background, experts were invited during the meeting to reflect on the recent evolution and prospects of the JITs Network, particularly in terms of the experts' role and functions, the integration of new partners and the Network's legal framework. They also reviewed latest developments in the field of JITs, including in relation to the Network's projects.

1. Latest developments in JITs practice

As usual, the meeting provided an opportunity to share and discuss the latest developments in JITs, including the first experiences with the USA and Switzerland. The presentations made by practitioners involved in JITs with these States showed that though the operation of such JITs may present specific features or deviate from usual EU practice, the tool is sufficiently flexible to allow practical adjustments and still function efficiently. As a follow-up to this session, it was agreed to collect more systematically practical experiences on the involvement of specific third States in JITs, so as to make the information available to all practitioners and facilitate EU coordination in these matters.

Recent operational successes were also presented, particularly a JIT established in a drug trafficking and Hawala money laundering case.

Europol experts provided an overview of opportunities provided by the implementation of the Europol Regulation on JIT operations.

² Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 138, 04.06.2009, p. 14).

2. The JITs Network: achievements and future developments

Three workshops were held on this topic.

a. JITs National Experts: new roles, new perspectives

Since 2005, the environment in which the first appointed experts were providing support has significantly changed: at that time, as mentioned in the CATS document, only three JITs had been set up among Member States, whereas in 2016, at least 69³ new JITs were established, including with third States.

In line with the evolution of the tool and of the various projects undertaken, the role of JITs experts has also evolved and covers – according to the replies to a questionnaire sent in preparation of the meeting – the following areas:

- facilitate the setting up of JITs, advice (23 replies);
- decide/approve at national level the setting up of JITs (10);
- participate in meetings (Eurojust, Europol or at national level) during which the set-up of JITs is discussed (12);
- contribute to drafting of JIT agreements (19);
- monitor and collect information on the state of play of JITs (20);
- compile statistics on JITs (18);
- collect information about best practice, legal and practical issues (20);
- training and awareness-raising (18);
- collect information about JIT-related case law (13);
- support JIT evaluation (10); and
- support drafting and/or submitting JIT funding applications (7).

Some of the replies also identify several best practice, e.g.:

- contribution of JITs experts to the preparation of bilateral model agreements;
- delegation to the JITs expert at national level of the power to sign JIT agreements; and
- participation of JITs experts in drafting of national JIT guidelines.

³ Number of JITs supported by Eurojust in 2016 – [Eurojust Annual Report 2016](#), p. 18.

- *Discussion and conclusions:*

Input from participants on this topic might serve as basic guidance to define the main roles of JITs experts.

- *Collection/dissemination of legal and practical information on JITs*

Dissemination of information should be to all relevant groups/stakeholders (judicial and law enforcement) and at all relevant levels. Best practice includes posting links on local intranets to main documents related to JITs (practical guide and model agreement, available in most official EU languages) or to the JITs section of the Eurojust website.

- *Advice/support in individual cases*

This role is seen as one of the main roles of JITs experts, requiring experience in judicial and/or police cooperation, since the advice can refer *inter alia* to the channel of judicial/police cooperation to be used.

- *Training/awareness-raising*

Efforts are still needed in this field, since experiences do vary at national level (e.g. not all public prosecutors are aware of the possibilities offered by the instrument). Following the screening, during the meeting, of the EU-funded film *Marriages for sale*, attended by director Olivier Ballande, a decision was taken to upload this material in the JITs restricted area, to allow its use to support the experts' awareness-raising efforts.

- *Monitoring of ongoing JITs and statistics*

The situation in this respect differs from one State to another: while in some Member States, statistics can easily be retrieved (JITs are authorised or signed at central level), others might be more challenging. Most Member States do not have a national register of JITs or official statistics, and national experts have sometimes developed 'informal' statistical tools. One best practice in this respect is to develop a dedicated monitoring table of ongoing JITs.

- *Participation in Network projects*

Enhancing the role of the experts in the evaluation of JITs, for example by ensuring attendance at evaluation/coordination meetings, was recommended. A suggestion was also made for the JITs experts to follow a pro-active approach in this field by contacting JIT leaders and recommending an evaluation. The importance of JITs case law was also highlighted. In relation to national legislation on JITs, the participants concluded that the experts should be in charge of updating the so-called *fiches espagnoles*, if necessary.

- *Financial assistance to JITs*

Most experts do not have time to be directly involved in JITs funding matters. However, the suggestion was made to establish a reference point or a ‘help desk’ at national level. JITs experts should at a minimum direct practitioners dealing with funding issues to existing tools (information on Eurojust’s website, JIT Funding Guide, etc.).

- *Interaction with other JITs experts*

Interaction among experts between network meetings remains limited, which could be linked to the fact that cooperation with counterparts mainly occurs via Eurojust’s National Desks. Exploration of ways to enhance such interaction was suggested.

Participants mentioned that JITs experts should preferably occupy a central position. Depending on national systems, experts could be appointed from both judicial and law enforcement levels. They should have extensive experience in judicial/police cooperation, but not necessarily practical experience with JITs.

Given the importance of reliable statistics on JITs, participants recommended that – regardless of the specifics of national systems or position of experts – JITs experts should have a complete view of ongoing JITs in their Member States. In this respect, the obligation to inform Eurojust of ongoing JITs (Art. 13.5 of Eurojust Decision) – though in practice not systematically followed – combined with the participation in ENCS might prove useful. Experts also recommended that Eurojust explore possibilities to share data received on the basis of Article 13.5 with the JITs Network Secretariat.

To enhance the visibility of JITs experts, dissemination of the list of experts and their contact details on national intranets, as well as the restricted part of the EJD website, was suggested.

b. The partners of the JITs Network

Based on the principles included in the document drawn from discussions held in 2005 in CATS, the JITs Network has developed as an informal structure composed of national experts appointed by Member States (together with representatives of Eurojust, Europol and EU institutions). The CATS document, however, provided no guidance as to the possible interaction of the JITs Network with other partners.

In past years, experience in JITs with third States has increased. In line with this evolution, several third States have approached the Secretariat to be given the possibility to appoint a national JIT expert to the EU network and add him/her to the list of JITs experts.

In addition, through the promotion of JITs, the Network has established links with EU agencies and networks (European Judicial Network (EJN), European Judicial Training Network (EJTN), European Police College (CEPOL)), as well as other EU and international organisations/bodies (e.g. Secretariat of the Police Cooperation Convention for South-East Europe (PCC-SEE), Council of Europe, etc.).

In this workshop, experts were invited to exchange views on the cooperation needs of the JITs Network with third States and EU/international bodies and to consider the adoption of operating principles.

- *Discussions and conclusions*

In general, participants agreed on the need for the JITs Network to enhance its cooperation with third States and EU/international bodies, and also emphasized that any effort in this respect should be primarily aimed at supporting operational needs.

More specifically, while supporting the need for the Network to reach out to more practitioners and stakeholders, experts pointed out the advantages of the current informal basis of the EU network (high level of mutual trust, effectiveness of cooperation, etc.). These principles should also remain and be observed when initiating cooperation with specific partners.

Facilitating cooperation on JITs should be the *ultima ratio* when considering strengthening the Network's ties with third States. In any case, national decisions in this respect should not in any way be affected by possible steps taken by the Network.

Furthermore, specific elements/criteria require further consideration:

- status and position of the State concerned, e.g. applicable JIT legal basis, geographic location;
- the number of designated contact points in States with several jurisdictions;
- role of the central authority ; and
- political dimension

In relation to EU and international bodies, experts stressed the importance of the JITs Network's promotional and training activities. Cooperation with the EJM, CEPOL and the EJTN in these areas was highlighted and praised.

The importance of cooperation with regional organisations and networks dealing with similar areas of interest was also acknowledged. As a best practice, cooperation with PCC-SEE to enhance knowledge of JITs national legislation was underlined.

Cooperation with OLAF could also be further explored, with due consideration of its individual independent status and investigative function in the area of financial crime.

In view of the legal basis included in the Second Additional Protocol to the Council of Europe Convention on Mutual Assistance in Criminal Matters of 1959 (Article 20), participants expressed the opinion that a 'natural' need to identify options for closer interaction and cooperation with the Council of Europe is present.

Cooperation with partners outside the European Union could be used as a method for further promoting JITs and the Network itself, which could serve as a model for similar structures outside EU as well as globally. Though such networks have not yet been identified in the specific field of JITs, experts considered that cooperation with networks of a more general nature could also be explored.

As part of this cooperation, extending access to the JITs Network restricted area might be considered on a case-by-case, 'need to know' basis only. Participants suggested that the Secretariat – which is in charge of managing the tool – prepares a draft policy.

In general terms, experts saw added value in adopting specific guidance on the conditions, scope and content of cooperation with partners, instead of relying on an expression of specific interest. A suggestion was made to develop draft guidelines in a dedicated working group, to be submitted for discussion during the next annual meeting.

c. What framework for JITs Network activities and projects?

In this workshop, participants were invited to share opinions on a possible review of the current framework of the JITs Network and to consider available options for such review, both in terms of format and content.

- *Discussions and conclusions:*

While pointing out that the existence and resources of the Secretariat are already regulated by the Eurojust Decision, participants acknowledged that the current framework of the JITs Network remains limited and vague, particularly regarding Network activities and external relations.

Taking into account the variety of situations between the existing networks, experts also discussed advantages and disadvantages of formal/informal approaches: whereas a formalised legal basis might increase the visibility of the Network (including at policy level) and enhance the engagement of partners, it offers less flexibility. In this respect, one has to consider the impact that a more formalised legal framework may have on the current functioning of the JITs Network.

Participants noted that a more detailed framework could positively impact the way JITs experts are perceived on national level and ensure a better recognition of their role. A more detailed framework may also bring clarification on communication channels and more homogeneity in the level of involvement of experts.

Participants expressed a preference for guidelines or recommendations allowing for a flexible approach in relation to practical matters, concrete support and adaptability to needs (e.g. meetings only when of added value). Before drawing up such a document, however, an inventory of existing national models should be performed. In any case, the role(s) of JITs experts needs to be defined, particularly the extent of their operational support (e.g. advisory role, drafting of JIT agreements, participation in coordination meetings, advice in relation to JIT funding, etc.). The involvement of JITs experts in Network projects – currently on a voluntary basis - might also be included, which would facilitate the recognition of this (additional) activity at national level. Based on Network recommendations, Member States could establish internal guidelines tailored to their own national systems.

In relation to the JITs restricted area, written guidelines would contribute to raising awareness among practitioners, including newly appointed experts. The involvement of third States as observers in Network meetings might be envisaged based on agreed criteria (e.g. existence of a cooperation agreement with Eurojust, etc.).

3. State of play of JIT projects

a. Financial support to JITs:

The Secretariat reported on the significant increase in demand for financial support in 2016 (180 applications received by Eurojust, which represents a 25% increase compared to 2015; 90 JITs financially supported, i.e. a 32% increase compared to 2015) and indicated that the same trend could already be observed in the first half of 2017. Appropriate contacts had been established by Eurojust with the budgetary authorities in light of this increase, to secure in the coming years a budget allocation enabling to maintain a meaningful support to JITs.

Eurojust also presented to the experts the *JITs online portal*. This new tool – expected to be released in the fourth quarter of 2017 – will enable a secure online submission of funding applications. The experts welcomed this initiative and provided feedback, particularly on the possibilities to edit draft applications.

b. Improving knowledge of JITs practice

Knowledge improvement is the objective of the project on JITs legislation (*fiches espagnoles*) and JIT evaluation. Summaries of JIT national legislations have been finalised and published on the JITs restricted area for most of the Member States (except EL, LU, MT and CY, at the date of the meeting). In addition, summaries have been published for specific third States (CH, NO), and the same exercise – in cooperation with the Secretariat of the PCC-SEE Convention – was agreed for the third States parties to this regional instrument (Bosnia and Herzegovina, Serbia, Moldova, FYROM, Montenegro).

Preparation of a second edition of the JIT evaluation report is planned for the end of 2017. To meet this deadline, experts were invited to communicate possible new evaluations before 31 October 2017. For this second edition, the project will be carried out in cooperation with Eurojust and will include specific developments deriving from Eurojust's experience in this field, including an analysis of cases supported by Eurojust in which a JIT was envisaged but not established.

In addition to these two projects, experts discussed and agreed on a process to collect and analyse JIT-related case law.

The project, which will be carried out in cooperation with Eurojust, is expected to increase knowledge among practitioners about legal issues and challenges encountered by national courts in relation to JITs and enable them to anticipate and address these challenges domestically. An additional benefit of the project may be a contribution to improving understanding of national legal systems and encourage judges to engage more in the field.

For the Secretariat to be able to compile and analyse relevant material, the support of JITs experts would be required to identify judicial decisions in which legal issues related to JITs were encountered by national courts. This compilation and analysis could also be facilitated, by the Secretariat, by consulting a variety of open sources. If necessary, support from experts will also be requested to identify – in court rulings rendered in a number of different languages –relevant sections to translate for the purposes of the project. To facilitate the overall process, a call for contributions will be sent every year to JITs experts in preparation of the annual meeting. In addition, relevant case law could also be sent on an *ad hoc* basis.

c. Improving exchange of information and evidence in JITs

The meeting allowed experts to reflect upon tools to be developed to support JITs operations, particularly the exchange of information and evidence.

Europol presented its project, Shaping Internet Resource Investigations Unified System (SIRIUS), a tool to facilitate Internet investigation and engagement with online service providers. The JITs Network was invited to promote the use of this platform for operational support in JIT cases. Europol also presented the concept of Collaborative Operational Environment. This concept will see its first iteration with Europol's Virtual Command Post (VCP), available upon request for the JIT Network before the end of first quarter 2018. To complement SIENA, the VCP will provide mobile tactical and real time operational exchange during cross-border operations.

From a different – but concurring – perspective, the Secretariat presented the results of recent JIT evaluations, in which the need for JITs practitioners to have at their disposal a ‘single point of communication’, i.e. a technical tool enabling the secure ‘posting’ of information and evidence, in conditions facilitating the traceability (and thus, further admissibility) of the evidence exchanged, was identified.

Experts expressed a strong interest in these presentations and requested the Secretariat to initiate, in liaison with Eurojust and Europol, a project with the objective of:

- Deploying SIRIUS for the benefit of JITs practitioners; and
 - Identifying practical needs and requirements of law enforcement and judicial authorities in relation to the above-mentioned operational collaborative environment.
-